

**STATEMENT OF PAUL R. MICHEL
CHIEF JUDGE, UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE**

MARCH 12, 2008

Mr. Chairman, thank you for allowing me to submit my statement supporting the United States Court of Appeals for the Federal Circuit's fiscal year 2009 budget request.

Our request totals **\$32,357,000**, an increase of **\$5,285,000** (19.5%) over the fiscal year 2008 appropriation of **\$27,072,000**. The primary justification for such an unusual increase is the need to accommodate seven senior judges who will expand our court's judicial output in 2009.

Thirty percent of this requested increase (**\$1,575,000**) is for Congressionally- and contractually-mandated adjustments to base (such as COLAs and escalation in rent and contracts). The only addition included in the adjustment to the base appropriation is \$298,000 to lease chambers outside the courthouse for senior judges for whom there is no space in the courthouse.

Four Federal Circuit judges are eligible to take senior status now; three more will become eligible in fiscal year 2009; and another judge will become eligible in fiscal year 2010. Of the three Federal Circuit judges who will become eligible to take senior status in fiscal year 2009, at least two are expected to do so. An increase to the Court's base of \$298,000 will cover the cost of an *off-site lease* for these two judges and up to three of the other four senior judges who are eligible for senior status.

Seventy percent of the Federal Circuit's fiscal year 2009 budget request, **\$3,710,000**, is to fund three specific program requests.

- The first specific program request (**\$1,860,000**) is to build out off-site chambers for five senior judges.
- The second specific program request (**\$932,000**) is for twelve law clerk positions for active judges, and
- The third specific program request (**\$918,000**) is for court improvements and a court employee position.

Part I

Half of the seventy per cent increase for specific program requests (**\$1,860,000**) will fund *build out* of leased chambers for five of the seven judges who either are, or will be, eligible to take senior status in FY 2009. This amount is based on an estimate coordinated with the Administrative Office of the United States Courts and on personal

experience with GSA in renovating chambers in this courthouse. This amount will provide the leased chambers with the furniture, furnishings and finishes consistent with the U. S. Courts Design Guide. The amount requested is the amount needed to support judges eligible and expected to take senior status now through FY 2010 and for whom there is no room in the existing courthouse.

As noted, two of the seven judges who will be eligible to take senior status have indicated a desire to do so when they become eligible for senior status in fiscal year 2009. Personal circumstances make it likely that at least two more will also do so. It is imperative then that the Federal Circuit acquire suitably built-out, off-site leased chambers for the two judges who have indicated a desire to take senior status in fiscal year 2009, two or three of the four already eligible, and another who is likely to do so in fiscal year 2010.

Part 2

Twenty-five percent of the specific program requests **(\$932,000)** will fund twelve additional law clerk positions. The Court is requesting \$932,000 to cover the cost of hiring an additional law clerk for each of the court's active judges for six months of fiscal year 2009. The court's increased workload now justifies funding a fourth law clerk for each active judge. Four law clerks are the norm at every Federal Appeals Court in the Nation except the Federal Circuit. In our fiscal year 2008 appropriation, Congress authorized three additional law clerks but provided no funding. We are now requesting funding for all twelve additional law clerks: the three approved but unfunded in Fiscal Year 2008, and the remaining nine, for a total of twelve, or one per judge.

Patent infringement cases make up one-third or more of the Federal Circuit docket. The number of patent infringement cases has grown by more than 25% in the 15 years since the third clerk was first provided. Patent infringement cases are critical to the Nation's economy, and the decisions of the Federal Circuit in these cases often have significant and sometimes dramatic economic implications for parties whose patents are upheld and found to have been infringed, whose patents are found not to have been infringed by other parties, and many other economic actors. The difficulty and complexity of patent infringement and other intellectual property cases have increased exponentially in recent years.

Most of the patent cases now filed in the Federal Circuit Court of Appeals are highly technical and require great insight and judgment. The issues presented in these cases involve arcane breakthroughs on the frontiers of science, technology, manufacturing, engineering, mathematics and medicine. In such cases legal judgments must be made, not only about the law itself but often on the basic underlying technical innovation, with few if any precedents, analogies or objective metrics to apply to help determine the outcome.

Many such cases involve a multitude of issues, no one of which can be ignored in an effort to narrow and focus the decision-making process as so often happens on appellate review. In patent infringement cases, all issues must typically be left together

because together they frame the problem and the outcome. The practical effect is that one case takes on the nature of several, whose many issues must be understood individually and collectively before the court can integrate them into a unifying substantive decision.

Timeliness is also an issue in many of these cases because the speed of technological change can render a delayed decision essentially ineffectual in a rapidly-changing economic marketplace.

In the appeal of such cases the question is not only whether the law was correctly applied below, but also whether the science or technology was understood correctly by the trial judge or jury. The latter issue is especially important in the innovative appeals that come so often before this court, where there are few if any boundaries, signposts, or rules to guide the deciding judges. In many cases the court is required to engage in *de novo* review. This means the judges must review all elements of the decision below, in some cases retracing the actual footwork of the trial judge, if not actually embarking on entirely new lines of thought, logic and analysis.

In patent infringement and other intellectual property cases most judges and their law clerks have to master an unfamiliar field of science and draw the best conclusions they can from scarce and limited resources. Because judges are assigned to panels randomly and not by specific subject matter expertise, all judges and their law clerks on the Federal Circuit are required to engage in extensive, and fundamental scientific inquiries in every area of science and technology. The practical effect is that each judge with his or her Chambers staff is engaged simultaneously in varied and complicated exercises, as opposed to deciding a series of often less complex, single issue cases, as in other courts of appeals.

The Federal Circuit's need for additional law clerks is based on an increased caseload in highly technical and complex appeals. Having a fourth law clerk would ensure that the judges of the United States Court of Appeals for the Federal Circuit can give the Nation, practitioners and litigants and the Patent and Trademark Office timely and thoughtful deliberation on the many challenging, critical and complex issues that come before the Court.

Part 3

Approximately twenty-five percent of the specific program requests **(\$918,000)** will fund the following:

1. Cooling equipment for the network server room (\$350,000);
2. A new Internal Controls Analyst position (\$71,000);
3. Renovations to the Circuit Library (\$200,000);
4. Enhancements to courtroom computer technology (\$255,000); and
5. Furniture and equipment for the new positions requested (\$42,000).

These items are important to the management and internal operation of the United States Court of Appeals of the Federal Circuit.

(1) **Permanent Cooling Equipment.** The Court requests **\$350,000** to provide permanent cooling equipment for the network server room. The Court's server room was jerry-built out of an internal office space. It was never properly configured, ventilated, wired or equipped. Following several instances of dangerously high temperatures, we took temporary steps to mitigate some of the immediate problems. These funds would enable us to reconfigure and cool the server room properly, thereby saving the life of expensive hardware and equipment and greatly improving the reliability of information technology for the court's judges and staff.

(2) **Internal Controls Analyst.** The Court is requesting **\$71,000** for a new Internal Controls Analyst position which was authorized and encouraged throughout the judiciary by the Judicial Conference. We have already assigned existing staff additional duties to conduct internal audits, inspections and inventories. But having a dedicated, trained professional to perform these responsibilities would fulfill the vision the Judicial Conference contemplates and materially improve the stewardship of the court's property, funds, and internal procedures.

(3) **Circuit Library Renovations.** The Court is requesting **\$200,000** to design and construct renovations to the Circuit Library, which has not been renovated since the courthouse was built in 1965. These modest renovations would improve access to and efficiency in managing the Library collection.

(4) **Courtroom Technology Enhancements.** The Court is requesting **\$255,000** to finance technological enhancements in our third courtroom, consistent with long-standing policy of the Judicial Conference. Such enhancements include digital sound recording equipment to enable uploading the audio portion of oral arguments on the court's website; laptop connectivity equipment and training to bring the courtroom into the 21st century and allow judges and their law clerks and counsel to use personal computers during arguments; under-floor cabling for safety, security and easy access; and video-conferencing infrastructure for remotely conducted oral arguments.

(5) **Furniture and Equipment.** The Court is requesting \$42,000 for furniture and equipment for the new positions described above: twelve law clerks and an internal controls analyst.

Mr. Chairman, I would be pleased to answer any questions the Committee may have or to meet with the Committee members or staff about our budget request. Thank you.